

**CONSOLIDATED PLANTATIONS BHD
& ANOR.**

v.

**EHAMBARAM A/L NARAYANAN & 2
ORS.**

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI HJ. ABDUL HAMID BIN
HJ. OMAR LP,
TAN SRI DATUK GUNN CHIT TUAN
CJ (MALAYA),
DATO' HJ. MOHD. EUSOFF BIN CHIN
SCJ
[SUPREME COURT CIVIL APPEAL
NO. 02-120-92]
2 JANUARY 1993

EMPLOYMENT LAW: Wages - Whether Special Relief Allowance (SRA) is part of wages - Whether SRA attracted monthly EPF contributions - Section 2 Employees Provident Fund Act 1951 (repealed 1991) - Definition of wages for the purposes of the Act.

INTERPRETATION OF STATUTES: Meaning of "together with" - Section 2 Employees Provident Fund Act 1951 - Purposive approach.

In 1973, the Government decided to pay a temporary allowance (SRA) to low-income public sector employees to assist them to overcome the hardship caused by rising prices and called upon the private sector to follow suit. The first appellant, in response, paid its employees SRA with effect from 1 October 1973.

The first and second respondents sought a declaration that upon a true construction of s. 2 Employees Provident Fund Act 1951, SRA paid by the first appellant was included in his "wages" and hence attracted monthly EPF contributions.

The learned trial Judge found that SRA paid by the first appellant was a temporary relief payment to alleviate the financial difficulties of the lower income employees and was free from income tax and EPF contributions. His Lordship also held that there was no intention between the parties to treat SRA as wages and that the first and second respondents had failed to prove that SRA was contractual and non-discretionary. The learned Judge however went on to hold that "wages" under the Employees Provident Fund Act 1951 was not

- a confined to remuneration due to the employee under his contract of service but also included "any other allowance payable in respect of high cost of living" and that accordingly SRA would fall within the aforesaid definition of wages. Consequently the learned trial Judge granted the declarations sought by the first and second respondents.
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Held:

- [1] In construing the definition of "wages" in s. 2 of the Employees Provident Fund Act 1951 the important words are "due to an employee under his contract of service" which follow and qualify the words "remuneration in money". In order to qualify as wages, SRA must be remuneration in money which falls within paragraphs (a), (b) & (c) of the said definition.
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- [2] By using the words "together with" in the definition, it was the intention of the legislature that any allowance payable by the employer to the employee in respect of high cost of living must be payable under a contract of service to fall within the definition of wages.
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- [3] The word "payable" in the definition of "wages" means that the employer is legally bound and obliged to pay the allowances which necessarily mean that the high cost of living allowance shall be a contractual term in the collective agreement binding the employer to pay the employee.
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- [4] The evidence showed that the SRA was non-contractual and was liable to be withdrawn at any time. It did not form part of the contract of service between the employer and employee and as such did not attract any EPF contributions.
- f

[Appeal allowed].

- g **UNDANG-UNDANG PEKERJAAN: Upahan - Samada elaun relief khas (SRA) adalah sebahagian upahan - Samada SRA tertakluk kepada caruman bulanan KWSP (EPF) - Seksyen 2 Akta KWSP 1951 (dimansuhkan 1991) - Definisi upahan bagi tujuan Akta tersebut.**

- h **PENTERJEMAHAN STATUT: Ertikata "bersama dengan" - Seksyen 2 Akta KWSP 1951 - Pendekatan purposif.**

- i Pada tahun 1973 Kerajaan bercadang membayar satu elaun sementara (SRA) kepada pekerja-pekerja sektor awam yang berpendapatan rendah untuk mengatasi

kesusahan yang timbul akibat dari harga barang-barang yang meningkat dan menyeru supaya sektor swasta juga berbuat demikian. Perayu pertama sebagai balas telah membayar pekerja-pekerjanya SRA mulai dari 1 Oktober 1973.

Responden pertama dan kedua telah memohon satu deklarasi bahawa dalam pentafsiran s. 2 Akta KWSP 1951 SRA yang dibayar oleh perayu pertama adalah termasuk dalam upahan dan seterusnya tertakluk kepada caruman bulanan KWSP.

Hakim bicara yang arif mendapati bahawa SRA yang dibayar oleh perayu pertama adalah bayaran relif sementara untuk meringankan beban kewangan yang dialami oleh pekerja berpendapatan rendah dan adalah bebas dari cukai pendapatan dan caruman KWSP. Hakim yang arif juga memutuskan bahawa tidak terdapat niat diantara kedua-dua pihak untuk menganggap SRA sebagai upahan dan bahawa responden pertama dan kedua telah gagal membuktikan bahawa SRA adalah termasuk dalam kontrak dan bukan terpulang kepada budibicara mereka. Bagaimanapun Hakim yang arif seterusnya berpendapat "upahan" dibawah Akta KWSP 1951 tidak terhad kepada gaji yang wajar dibayar kepada pekerja dibawah kontrak perkhidmatan tetapi termasuk "apa-apa elaun lain yang dibayar berhubungan dengan kos saraan hidup" dan sehubungan itu SRA adalah termasuk dalam definasi upahan. Oleh ynag demikian Hakim yang arif telah memberikan deklarasi yang dipohon oleh responden pertama dan kedua.

Diputuskan:

[1] Dalam mentafsirkan definasi "upahan" dalam s. 2 Akta KWSP 1951 perkataan utama adalah "yang wajar dibayar kepada seorang pekerja dibawah kontrak perkhidmatannya" yang mengikuti dan menjelaskan perkataan "ganjaran dalam bentuk wang". Bagi melayakkan ianya sebagai upahan SRA mestilah ganjaran dalam bentuk wang seperti yang terkandung dalam perenggan (a), (b) & (c) definasi tersebut.

[2] Dengan menggunakan perkataan "bersama dengan" dalam definasi itu, adalah tujuan badan perundangan bahawa apa-apa elaun yang harus dibayar oleh majikan kepada pekerja berhubungan dengan kos saraan hidup yang wajar dibayar dibawah kontrak

a perkhidmatan termasuk dalam definasi upahan.

[3] Perkataan "bayar kepada" dalam definasi "upahan" bererti bahawa majikan adalah terikat disisi undang-undang dan terpaksa membayar elaun-elaun yang semesti bermakna elaun saraan hidup adalah satu terma kontrak dalam perjanjian bersama yang mengikat majikan untuk membayar pekerjaanya.

[4] Semua keterangan menunjukkan bahawa SRA adalah tidak termasuk dalam kontrak dan boleh ditarik balik pada bila-bila masa. Ia bukan sebahagian daripada kontrak perkhidmatan antara majikan dan pekerja oleh itu tidak tertakluk kepada caruman KWSP.

[Rayuan dibenarkan].

Cases referred to:

d *Persatuan Pengeluar-pengeluar Pertanian Tanah Melayu v. Kesatuah Kebangsaan Pekerja-Pekerja Ladang* (Award No. 111/86) ([1986] 1 ILR 586) (refd)

P.A. Pereira & Anor. v. Hotel Jayapuri Bhd. & Anor. [1987] 1 CLJ 14/[1986] 2 MLJ 1 (refd)
In re Joel [1943] 1 Ch. 311 (refd)

e *Massy v. Eyre & Lloyd* [1863] ER 1021 (refd)
In re Howell's Application [1972] 1 Ch. 509 (refd)
Asia Motor Co. (KL) Sdn. Bhd. v. Ram Raj & Anor. [1985] 2 MLJ 202 (refd)
Petaling Rubber Estate Ltd. & Anor. v. Nadarajah & 164 Ors. [1987] 2 CLJ 296/[1988] 1 MLJ 22 (refd)

Legislation referred to:

f *Employees Provident Fund Act 1951* (repealed & replaced by EPF Act 1991) s. 2, Third Schedule
Employment Act 1955
Industrial Relations Act 1967, s. 17
Wages Council Act 1947

g *For the appellants - V.T. Nathan (Wilfred Abraham and P. Jayasingam with him); M/s. Shearn Delamore & Co.*

For the first and second respondents - B. Lobo; M/s. Lobo & Associates

For the third respondent - Prasad Abraham; M/s. Abraham & Partners

h **[Editorial Note:** The judgment of the High Court was reported in [1992] 2 CLJ 1002].

JUDGMENT

Hj. Abdul Hamid Bin Hj. Omar LP:

i I have had the advantage of reading the judgments of Gunn Chit Tuan CJ and Eusoff Chin SCJ and I concur with both of them that the

appeal should be allowed and the order of the High Court dated 28 February 1992 granting the respondents an order in terms of prayers one, two and four of their originating summons dated 15 June 1984, be reversed. The deposit is also to be refunded to the appellants to account of taxed costs.

Gunn Chit Tuan CJ (Malaya):

This appeal was involved with the construction of the following definition of "wages" in s. 2 of the former Employees Provident Fund Act 1951, which was repealed and replaced by the Employees Provident Fund Act 1991, with effect from 1 June 1991:

'wages' means the remuneration in money due to an employee under his contract of service or apprenticeship, whether agreed to be paid monthly, weekly, daily or otherwise -

- (a) in respect of the normal periods of work to be performed by the employee;
- (b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee; or
- (c) where payment is calculated in relation to the volume of work done, in respect of the work completed by the employee,

together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living:

Provided that the wages of an employee in the service of the Government of Malaysia or of a State or of a statutory or local authority under the new scheme shall be the monthly salary inclusive of pensionable allowances payable in accordance with the salary scales of the new scheme.

The issue arose in the following circumstances in which Special Relief Allowance (SRA) was paid by Consolidated Plantations Berhad ("the first appellant"), which is a plantation company and a member of the Malayan Agricultural Producers Association ("the second appellant"). The second appellant is a registered trade union whose members are employers in the plantation industry and one of its aims is to negotiate collective agreements for its members with employee trade unions, such as the National Union of Plantation Workers ("the second respondent"). Several collective agreements were entered into between the second appellant and the second respondent between 1 October 1973, and 30 April 1986, and in those agreements SRA was excluded from the wages

a of the employees. It was not until the Industrial Court Award No. 111/86, ([1986] 1 ILR 586), which came into effect on 1 May 1986, that SRA was incorporated into the basic wage of the employees. In this case, there was no evidence of the terms of employment of one Ehambaram a/l Narayanan ("the first respondent"). We were informed by Mr. Lobo, Counsel for the first and second respondents, that the first respondent was a daily-rated employee. In any case, it was an implied term of the contract of employment between the first appellant and the first respondent, who were bound by the collective agreements, that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the said agreements.

d As a matter of history, the Court below was informed that the Government through the then Honourable Prime Minister had announced in a statement issued on 20 October 1973, that the Government had decided to pay SRA to employees in the public sector receiving salaries of RM500 per month and below as well as to pensioners to assist them to overcome the hardship caused by rising prices. It was stated that the said allowance was to be temporary and not subject to income tax or EPF contributions. The Government urged the private sector to follow suit and members of the second appellant, including the first appellant, responded to the call by Government to pay their employees SRA with effect from 1 October 1973. SRA was then paid by member companies of the second appellant to their respective employees as a benefit granted in the special circumstances prevailing in 1973. It was paid outside the employees' contract of service, i.e. e outside the said collective agreements entered into between the second appellant and the second respondent, all of which were deemed to be awards of the Industrial Court under s. 17 of the Industrial Relations Act 1967. However despite the express agreements between the second appellant and the second respondent to treat SRA as a non-contractual payment, the first and second respondents filed an originating summons in the High Court at Melaka on 15 June 1984, to seek a declaration that upon a true construction of s. 2 of the Employees Provident Fund Act 1951, SRA paid by the first appellant since 1 October 1973, was included in his "wages" and hence attracted monthly EPF contributions.

Wan Yahya J., in a judgment delivered in the High Court at Shah Alam on 28 February 1992, found that SRA paid by the first appellant since 1 October 1973, was a temporary relief payment which was paid pursuant to the Government's call to provide a temporary payment to alleviate the financial difficulties of the lower income workers and was free from income tax and EPF contributions. His Lordship also held that there was no intention between the parties to treat SRA as wages and that the first and second respondents had failed to prove that SRA was contractual and non-discretionary. It was pointed out to us by Mr. V.T. Nathan, senior Counsel for the first and second appellants, that there was no cross-appeal by the respondents against those findings of fact by the learned High Court Judge.

Learned Counsel for the appellants then referred to the grounds of judgment of Wan Yahya J. and pointed out that the learned trial Judge however held that "wages" under the Employees Provident Fund Act 1951, was not confined to remuneration due to the employee under his contract of service but also included "any other allowance payable in respect of high cost of living" (see p. 24 of the appeal records), and that accordingly SRA would fall within the aforesaid definition of wages. Counsel stated that it would appear that the learned trial Judge came to that conclusion on the basis of the words "together with" in the phrase "together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living" and had the effect of bringing within the definition of "wages" all payments for high cost of living regardless of whether they are due under his contract of service or not. Counsel submitted that the learned trial Judge fell into error in considering that all payments in respect of high cost of living fell within the definition of "wages" without considering whether such payments were remuneration due under the contract of service. He contended that the word "due" meant that which may be recovered by action and points to debts or moneys arising under a contractual obligation. It was also contended that not all remuneration due under a contract of service are "wages" but only contractual payments which are due in respect of paragraphs (a), (b) or (c) of the definition section and contractual payments in respect of high cost of living.

a We were reminded of the following passage in the judgment of Lord MacKay of Clashfern in the case of *P.A. Pereira & Anor. v. Hotel Jayapuri Bhd. & Anor.* [1986] 2 MLJ 1, 2, which was concerned with whether service charges formed part of the wages and attracted EPF contributions under the Employees Provident Fund Act 1951:

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In practice the amount of contribution to be made by an employee and by his employer in respect of his employment for a particular period, say of a month, will be determined after the conclusion of that month. The total reward to which in terms of his contract the employee is entitled can then be determined in the light of what has occurred during that month, but the total remuneration in money which is due to the employee may not be subject to contributions under the Act. In a case to which paragraph (a) of the definition applies these contributions will apply only to such part of the remuneration as was due in respect of the normal periods of work to be performed by the employee as these are set out in the contract of service.

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Turning to the words "together with", Counsel submitted that they do not have the effect of doing away with the condition precedent that the allowance must be due under a contract of service. Like the learned trial Judge, Counsel also referred to *In re Joel* [1943] 1 Ch. 311 at 315 and submitted that the U.K. Chancery Division had clearly decided that a bequest of a leasehold house "together with its contents" is a single gift and not two separate gifts and the legatee may not disclaim the gift of the house and retain its contents.

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Counsel also submitted that for a cost of living allowance to be "wages", it must **be due and payable** under a contract of service. He contended that the word "payable" carries the same meaning as "due", which means entitled or that which one is under an enforceable obligation to pay *Massy v. Eyre & Lloyd* [1863] ER 1021, 1029; *In re Howell's Application* [1972] 1 Ch. 509, 511.

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It was also Counsel's submission that the learned Judge had failed to recognise that the words "due under the contract of service" also apply to allowances payable in respect of the high cost of living. His failure to give effect to the express words in the definition resulted in his holding that SRA, which was discretionary and non-contractual, was included in the definition of "wages".

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Mr. Nathan then referred to that part of the learned trial Judge's judgment where he stated as follows:

It is therefore for the plaintiff to show that the SRA in the present case, arises out of the contractual terms entered into between the plaintiff and the first defendant. Various correspondence as well as the Collective Agreement have been produced in Court. My impression after reading them is that there was no such intention between the parties to treat SRA as wages.

and pointed out His Lordship appeared to have accepted the proposition that it was clear from the definition that SRA must be a contractual payment before it can fall within the definition of "wages".

Reference was also made to two cases in which the question of the nature of SRA was considered in the context of the Employment Act 1955, and the Wages Council Act 1947. In the case of *Asia Motor Co. (KL) Sdn. Bhd. v. Ram Raj & Anor.* [1985] 2 MLJ 202, it was held *inter alia* that the word "remuneration" in the Wages Council Act means wages or basic wages and does not include other items such as SRA, commission or bonus. In the case of *Petaling Rubber Estate Ltd. & Anor. v. Nadarajah & 164 Ors.* [1988] 1 MLJ 22 at 24, this Court also held *inter alia* that in its true and original concept, SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that the parties have contracted otherwise, SRA cannot be regarded as part of the wages. In other words, unless the parties agree that SRA should be incorporated as part of the wages, it must be regarded according to its original concept and character, i.e. payable over and above wages. We would pause here to reiterate the following passage in the judgment of Hashim Yeop A. Sani SCJ (as he then was) in that case:

Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages. In other words unless the

a parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character i.e. payable over and above wages.

b Counsel submitted that the learned trial Judge, in distinguishing those two cases in his grounds of judgment, had failed to appreciate that the common thread in the definition of "wages" in both the Employment Act 1955, and the Employees Provident Fund Act 1951, was the condition precedent that the payment of SRA must be contractual and that if payment of such allowance was not contractual, it was excluded from the definition.

c Mr. Lobo stated that it was intended that SRA should be included in the wages of the employees but did not refer us to any piece of evidence to support that statement. Mr. Nathan, however, referred us to a document entitled "MAPA/ NUPW AGREEMENT 1976" appearing at p. 341 of the appeal records, in which it was agreed that certain payments including SRA should be excluded for the purposes of determining "present wage". We have perused the records of appeal and found that in 1976 it was specifically agreed that wages would not include SRA. Another collective agreement was entered into between the parties in 1979 and in that agreement too, SRA was excluded from the wages of the employees. It was not until 1986 when the Industrial Court Award No. 111/86, ([1986] 1 ILR 586) which came into force on 1 May 1986, that SRA was incorporated into the basic wage of the employees. There was therefore evidence to support the learned trial Judge's finding that it was never the intention of the parties to treat SRA as wages until the Industrial Court Award in 1986.

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g In construing the definition of "wages" in s. 2 of the former Employees Provident Fund Act 1951, I consider that the important words are "due to an employee under his contract of service" which follow and qualify the words "remuneration in money". I therefore agree with the contention of Counsel for the appellants that to qualify as wages, it must be remuneration in money which falls within paragraphs (a), (b) and (c) of the said definition.

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i It is also my view that, by using the words "together with" in the definition, it was the intention of the legislature that any allowance

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payable by the employer to the employee in respect of high cost of living must be payable under a contract of service to fall within the definition of wages and this view is fortified by the use of the words "explicitly or impliedly". "Explicitly" of course means expressly stated and the word "implied" means "necessarily intended though not expressed" in the contract of service. In other words, by the use of the words "together with", it was the intention of the legislature to aggregate any allowance payable by the employer to the employee in respect of high cost of living with the remuneration in money which must be due and payable under a contract of service.

For the reasons stated above, I would allow this appeal with costs here and in the Court below. The order of the High Court dated 28 February 1992, granting the respondents an order in terms of prayers one, two and four of their originating summons dated 15 June 1984, is hereby reversed. The deposit is also to be refunded to the appellants to account of taxed costs.

Hj. Mohd. Eusoff Bin Chin SCJ:

On 20 October 1973, the then Prime Minister, the late Tun Abdul Razak, announced that the Government, being concerned that rising prices of essential goods were gravely affecting the lower income groups, would, among other measures to be taken, pay a special relief allowance to Federal and State Government employees receiving salaries of RM500 per month and below. The rate of this allowance was -

<u>Monthly Salary</u>	<u>Monthly Special Relief Allowance</u>
RM300 and below	RM30
RM301 to RM400	RM20
RM401 to RM500	RM15

These special relief allowances were to be temporary and, therefore, **would not be subject to income-tax or Employees Provident Fund contributions.** To alleviate the sufferings of the lower income groups in the country, private employers were urged to co-operate with the Government to pay special relief allowances to their lower income employees.

The second appellant, the Malayan Agricultural Producers Association (MAPA) and its

a members including the first appellant responded positively to the call by the Government to pay their employees the special relief allowance.

By letter dated 22 November 1973 MAPA informed the second respondent, the National Union of Plantation Workers (NUPW) that members of the MAPA would pay the special relief allowances. The NUPW responded that they would not accept anything less than what was announced by the Government and that the Prime Minister's request should be complied with *in toto*.

b MAPA then directed its members, comprising about 193 plantation companies, through a circular dated 10 January 1974 to pay their employees the special relief allowances retrospectively effective from 1 October 1973. The NUPW acknowledged that the payments of the special relief allowance as directed by MAPA was in accordance with the Prime Minister's request.

c Conceivably, the payment of this special relief allowance was not intended to be a contractual term, and the special relief allowance was therefore not included in the collective agreements entered into between MAPA and NUPW. Consequently in the successive collective agreements signed between MAPA and NUPW, the special relief allowance was excluded. It was only in the collective agreement between MAPA and NUPW approved by the Industrial Court *vide* Industrial Court Award No. 111/86 ([1986] 1 ILR 586) that the special allowance was incorporated into the basic wage of an employee effective from 1 May 1986 and thereafter, payments of special relief allowances ceased.

d It is not in dispute that no EPF contributions were (as directed by the Prime Minister) ever made by the employer and the employee in respect of the special relief allowance. However, on 15 June 1984, 12 years after the special relief allowance was first paid, the plaintiffs filed an action in the High Court at Melaka seeking a declaration that upon the true construction of s. 2 of the Employees Provident Fund Act 1951, the first appellant (employer) and the first respondent (employee) were liable to make EPF contributions on the special relief allowance effective from 1 October 1973.

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It is to be observed that the rate of EPF contributions per month by the employer and by the employee is based on the amount of monthly **wages** payable to the employee, and the amount of contributions are as provided for in the Third Schedule to the EPF Act 1951. If therefore, the special relief allowance was part of wages payable to the employee, the special relief allowance would in law attract EPF contributions.

In the High Court, the learned Judge made a finding of fact that the special relief allowance was paid by the employer purely as a temporary relief which could be withdrawn at any time, that it was non-contractual, and that it was not intended by the parties that it was to form part of wages. Nevertheless, having examined the definition of 'wages' in s. 2 of the EPF Act 1951, he formed the view that by operation of law, the special relief allowance was 'wages' within that definition.

In determining whether the special relief allowance was 'wages' within the definition, it is relevant to refer to *Petaling Rubber Estate Ltd. v. Nadarajah* [1988] 1 MLJ 22 at p. 24 where Hashim Yeop Abdullah Sani (SCJ as he then was) held:

Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages.

What is important however is to place a proper construction to the word 'wages', as defined in s. 2 of the EPF Act 1951 as follows -

"wages" means the remuneration in money due to an employee **under his contract of service** or apprenticeship, whether agreed to be paid monthly, weekly, daily or otherwise -

- (a) in respect of the normal periods of work to be performed by the employee;
 - (b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee;
- or**

- a** (c) where payment is calculated in relation to the volume of work done, in respect of the work completed by the employee,

together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living;

- b** Provided that the wages of an employee in the service of the Government of Malaysia or of a State or of a statutory or local authority under the new scheme shall be the monthly salary inclusive of pensionable allowances payable in accordance with the salary scales of the new scheme.

(Emphasis added)

- c** The learned High Court Judge held that in his view,

- d** 'wages' under the EPF Act is not confined to the remuneration due to the employee under his contract of service in circumstance specified under para (a), (b) and (c) of that definition only, but will include any other allowance payable in respect of high cost of living. It is immaterial in what name one calls it - SRA or COLA but so long as it can be taken explicitly or impliedly as an allowance paid by the employer to relieve the employee of the high cost of living, it will fall within the definition of wages. It must be observed that this supplemental or conjoining limb to include other allowance for high cost of living is not to be found in the definition of 'wages' in the Employment Act as discussed in the earlier cited cases which are clearly distinguishable from the present case.

- f** In the light of the above it seems clear that what the learned Judge did was to separate the definition of wages into two limbs, the first limb finishing at the end of paragraph (c) **in the definition**, and the second limb begins from the words "together with". This conclusion was arrived at by the learned Judge even though he had construed the words "together with" to mean "inclusive of".

- g** Whilst I do agree that the words "together with" was correctly held to mean "inclusive of", I am however of the view that the word 'wages' as defined means remuneration, payment, or compensation in money due to an employee under his contract of service, in respect of work done and calculated in accordance with the circumstances described under paragraph (a) or (b) or (c) including any allowance payable by the employer in respect of high cost of living provided that the allowance payable by the employer is included in the contract of service.

That part of the definition beginning with the words "together with" should not be read disjointedly, or in isolation but must be read together as a whole, and when so read, the meaning is clear in that the remuneration in money including high cost of living allowance, due to an employee to constitute 'wages' must be under his contract of service.

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Further the word 'payable' in the definition of 'wages' is very relevant as in the context used here, it means that the employer is legally bound or obliged to pay the allowances, which necessarily mean that the high cost of living allowance shall be a contractual term in the collective agreement binding the employer to pay the employee. In the instant case the evidence shows that the special relief allowance was non-contractual, liable to be withdrawn at any time. It was only incorporated into the collective agreement as basic wage, in the Industrial Court Award No. 111/86 ([1986] 1 ILR 586) effective from 1 May 1986.

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Since the special relief allowance did not form part of the contract of service for the period before 1 May 1986 between the employer and the employee, the allowance did not attract any EPF contributions.

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I would therefore allow this appeal with costs here and in the High Court. The deposit of RM500 is returned to the appellant.

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